

DENIAL OF CREDIT/DEBIT OF ELECTRONIC CREDIT LEDGER UNDER RULE 86A OF CGST RULES



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The GST policy wing has issued instructions 20/16/05/2021-GST dated 2nd November 2021. Following are the guidelines disallowing debit of Electronic Credit Ledger under Rule 86A of CGST Rules 2017:

“86A. Conditions of use of amount available in electronic credit ledger. -

- (1) The Commissioner or an officer authorized by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as
- a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36-
 - i. issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or
 - ii. without receipt of goods or services or both; or
 - b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or
 - c) the registered person availing the credit of input tax

has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

- d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36,

may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 19 or for claim of any refund of any unutilized amount.

- (2) The Commissioner, or the officer authorized by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.
- (3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction

Commissioner, or an officer authorized by him, not below the rank of Assistant Commissioner, must have “reasons to believe” that credit of input tax available in the electronic credit ledger is either ineligible or has been fraudulently availed by the registered person, before disallowing the debit of amount from electronic credit ledger of the said registered person under rule 86A. The reasons for such belief must be based only on one or more of the following grounds:

The credit is availed by registered person on the invoices

or debit notes issued by a supplier, who is found to be non-existent or is found not to be conducting any business from the place declared in registration.

The credit is availed by the registered person on invoices or debit notes, without actually receiving any goods or services or both.

The credit is availed by the registered person on invoices or debit notes, the tax in respect of which has not been paid to the government.

The registered person claiming the credit is found to be non-existent or is found not to be conducting any business from the place declared in registration.

The credit is availed by the registered person without having any invoice or debit note or any other valid document for it.

The Commissioner or an officer authorized by him, not below the rank of Assistant Commissioner, must form an opinion for disallowing debit of an amount from electronic credit ledger in respect of a registered person only after proper application of mind considering all the facts of the case, including the nature of prima facie fraudulently availed or ineligible input tax credit and whether the same is covered under the grounds mentioned in sub-rule (1) of rule 86A; the amount of input tax credit involved; and whether disallowing such debit of electronic credit ledger of a person is necessary for restricting him from utilizing/passing on fraudulently availed or ineligible input tax credit to protect the interests of revenue.

Proper Authority For The Purpose Of Rule 86a

The Commissioner is the proper officer for the purpose of exercising powers for dis-allowing the debit of amount from electronic credit ledger of a registered person under rule 86A. However, Commissioner/ Principal Commissioner / ADG can also authorize any officer subordinate to him, not below the rank of Assistant Commissioner to be the proper officer for exercising such power under rule 86A.

Suggested Proper Authority

1. Upto Rupees One Crore – Deputy Commissioner/ Assistant Commissioner/Deputy Director/Addl. Director.
2. Above Rupees One Crore but below Rupees Five Crore – Addl. Commissioner/Joint Commissioner/ Addl. Deputy Director/Joint Director.
3. Above Rupees Five Crore – Principal Commissioner/

Commissioner/Addl. Director General.

Fraudulent ITC Noticed During Audit

If during the course of Audit under section 65 or 66 of CGST Act, 2017 it is noticed that any input tax credit has been fraudulently availed or is ineligible as per the grounds mentioned in sub-rule (1) of rule 86A, which may require disallowing debit of electronic credit ledger under rule 86A, the concerned Commissioner/ Principal Commissioner of CGST Audit Commissionerate may refer the same to the jurisdictional CGST Commissioner for examination of the matter for exercise of power under rule 86A. If the jurisdictional Commissioner forms an opinion that the credit availed or taken is fraudulent in nature, then he may exercise power under Rule 86A and disallow the credit. The amount disallowed for debit from electronic credit ledger should not be more than the amount of input tax credit which is believed to have been fraudulently availed or is ineligible.

Procedure for disallowing debit of electronic credit ledger/blocking credit under Rule 86(A):

The amount of fraudulently availed or ineligible input tax credit availed by the registered person, as per the grounds mentioned in sub-rule (1) of rule 86.4, shall be prima facie ascertained based on material evidence available or gathered on record. It is advised that the powers under rule 86A to disallow debit of the amount from electronic credit ledger of the registered person may be exercised by the Commissioner or the officer authorized by him, as per the monetary limits detailed in this. The officer should apply his mind as to whether there are reasons to believe that the input tax credit availed by the registered person has either been fraudulently availed or is ineligible, as per conditions/ grounds mentioned in sub-rule (1) of rule 86A and whether disallowing such debit of electronic credit ledger of the said person is necessary for restricting him from utilizing/passing on fraudulently availed or ineligible input tax credit to protect the interests of revenue. Such "Reasons to believe" shall be duly recorded by the concerned officer in writing on file, before he proceeds to disallow debit of amount from electronic credit ledger of the said person.

The amount disallowed for debit from electronic credit ledger should not be more than the amount of input tax credit which is believed to have been fraudulently availed or is ineligible, as per the conditions/ grounds mentioned in sub-rule (1) of 86A

The action by the commissioner or the authorized officer, as the case may be, to disallow debit from electronic credit ledger of a registered person, is informed on the portal to



the concerned registered person, along with the details of the officer who has disallowed such debit

Allowing Debit Of Disallowed/Restrictd Credit Under Sub-Rule (2) Of Rule 86(A)

The commissioner or the authorized officer, as the case may be, either on his own or based on the submissions made by the taxpayer with material evidence thereof, may examine the matter afresh and on being satisfied that the input tax credit, initially considered to be fraudulently availed or ineligible as per conditions of sub-rule (I) of rule 86A, is no more ineligible or wrongly availed, either partially or fully, may allow the use of the credit so disallowed/restricted, up to the extent of eligibility, as per powers granted under sub-rule (2) of rule 86A. Reasons for allowing the debit of electronic credit ledger, which had been earlier disallowed, shall be duly recorded on file in writing, before allowing such debit of electronic credit ledger.

The restriction imposed as per sub-rule (I) of rule 86A shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction. In other words, upon expiry of one year from the date of restriction, the registered person would be able to debit input tax credit so disallowed, subject to any other action that may be taken against the registered person. It should be noted that in all such cases the investigation and adjudication are completed at the earliest, well within the period of restriction, so that the due liability arising out of the same can be recovered from the said taxable person and the purpose of disallowing debit from electronic

credit ledger is achieved.

Personal Suggestion

The power of disallowing debit of amount from electronic credit ledger must not be exercised in a mechanical manner and careful examination of all the facts of the case is important to determine case(s) fit for exercising power under rule 86A. The reasons are to be on the basis of material evidence available or gathered in relation to fraudulent availment of input tax credit or in eligible input tax credit availed as per the conditions/grounds under sub-rule(I) of rule 86A.

Memorandum

The conclusions reached and views expressed in the memorandum are matters of opinion. My opinion is based on the understanding of the law and regulations prevailing as of the date of this memorandum and my past experience with the revenue authorities. However, there can be no assurance that the tax authorities or regulators may not take a position contrary to my views. Legislation, its judicial interpretation and the policies of the regulatory authorities are also subject to change from time to time, and these may have a bearing on the advice that I have given. Accordingly, any change or amendment in the law or relevant regulations would necessitate a review of my comments and recommendations contained in this memorandum. My conclusions are based on the completeness and further, this memorandum may not be used or quoted in whole or in part or otherwise referred to in any document or delivered to any other person or entity without my prior written consent.